IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 753 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

BHANJIBHAI G MAKWANA

Appearance:

1. Criminal Appeal No. 753 of 1993

Mr.I.M.Pandya, learned A.P.P. for Appellant

NOTICE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 26/08/2004

ORAL JUDGEMENT

#. This appeal is preferred by the State under Section 11 of the Probation of Offenders Act, 1958 against the

order of giving benefit of Probation of Offenders Act, bail of Rs.3,000/- for a period of three years of good conduct passed in Criminal Case No.437 of 1992 on 28.04.1993 by the learned J.M.F.C., Muli, Surendranagar.

#. The short facts of the case are such that the accused-respondent who was serving as teacher from 6.9.85 to March, 1986 in Smt.C.K.T.Shah Vinaymandir High School, Danavada gave voluntary resignation on 5.9.85 to join another job with the Central Servilance Station, Nadiad as Field Reporter. He joined the said service on 12.9.85 and on 19.9.85 gave application to the aforementioned school to cancel his resignation and again joined that service. It is case of the prosecution that from the period from September, 1985 to March, 1986, he worked at both the places and drew salary of Rs.7,573.60 ps. from the High School and Rs.2,963.45 ps. from the Nadiad Zonal Officer, Tarapur and thus cheated both the State Government and Central Government and misappropriated the funds and therefore committed offences punishable under Sections 409, 468, 420, 465, 471 of the Indian Penal Code. The accused was arrested on 08.12.1992 and released on bail by the order of the Sessions Court. After investigation, chargesheet against the accused was filed before the learned Sessions Court on 16.12.1992.

#. The charge was read over to the accused and as the accused pleaded guilty, charge was not framed against the accused. Thereafter, application exh.5 was given before the Court below to obtain probation under the Probation of Offenders Act, pursuant to which the report of the Probation Officer was called for. Taking into consideration the aspects of the case, the learned Court below passed order as aforementioned, against which the State has preferred this appeal.

#. Mr.Pandya, learned A.P.P. for the appellant-State submitted that the court below should have considered the fact that the respondent-accused has cheated both the State Government and Central Government and the punishment for offence under Section 409 of I.P.C. is imprisonment for life and therefore the court below has committed error in granting probation to the respondent-accused. Therefore, he prayed that the order of the learned trial Judge, be set aside. On other hand, though the respondent was served, he did not remain present either in person or through his advocate.

#. I have gone through the judgment and the papers. The report of the Probation Officer exh.6 shows that the

respondent-accused is disturbed and he feels guilty of the offence that he has committed. One more fact is also mentioned that the respondent-accused is not an habitual offender and therefore if the accused is ready to repay the amount misappropriated, then granting of probation is recommended. Taking into consideration this report and the challans showing the repayment of the amount, the learned trial Judge has granted probation and also opined that if in the period of three years, he commits any similar offence, then the order of punishment will be passed.

#. Taking into consideration the fact that the respondent-accused is not an habitual offender, he has committed this offence for the first time, he has repaid the amount misappropriated in the Government Treasury and also the fact that almost 11 years have passed since the order of the learned trial Judge is passed and during this period, no other complaint to this effect is filed against this respondent-accused, I am of the opinion that it is not proper to interfere with the judgment of the learned trial Judge after such a long period. Accordingly, this appeal deserves to be dismissed and it is accordingly dismissed.

(SHARAD D DAVE, J)

srilatha